

SUPREME COURT OF KENTUCKY
CASE NO. 2013-SC-314

FILED

MAY 17 2013

CLERK
SUPREME COURT

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

MOVANT

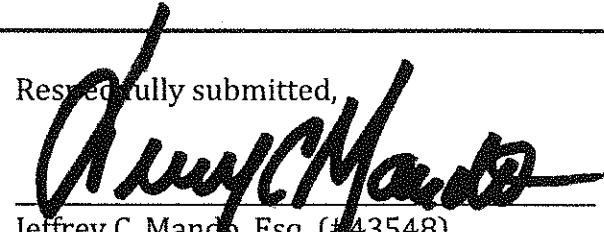
ON APPEAL FROM
v. CAMPBELL CIRCUIT COURT, DIV. 1
CIVIL ACTION NO. 12-CI-0089

CHARLIE COLEMAN, JOHN P. ROTH
AND ERIK HERMES

RESPONDENTS

MOTION FOR INTERMEDIATE RELIEF

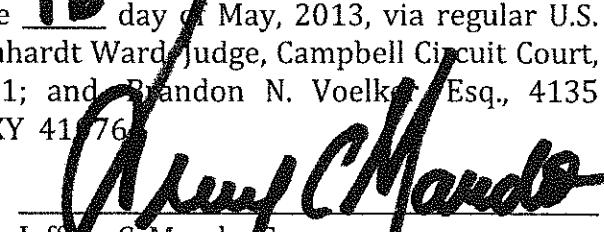
Respectfully submitted,


Jeffrey C. Mando, Esq. (#43548)
Louis D. Kelly, Esq. (#92094)
ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC
40 West Pike Street
Covington, KY 41012
859.394.6200
jmando@aswdlaw.com
lkelly@aswdlaw.com

*Attorneys for Defendant, Campbell County
Library Board of Trustees*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Movant's Motion for Intermediate Relief was sent on this the 18 day of May, 2013, via regular U.S. Mail, postage prepaid to: Hon. Julie Reinhardt Ward, Judge, Campbell Circuit Court, 330 York Street, Newport, KY 41071; and Brandon N. Voelker, Esq., 4135 Alexandria Pike, Suite 109, Cold Spring, KY 41076.


Jeffrey C. Mando, Esq.

Movant, the Campbell County Library Board of Trustees ("the Library"), by and through counsel, respectfully moves this Court for immediate relief pursuant to CR 76.33 staying enforcement of the Campbell Circuit Court's April 1, 2013 Order declaring that KRS 173.790 governs the ad valorem taxation for libraries created by petition. Specifically, the Library seeks to keep its current ad valorem tax rate while this appeal is pending to maintain the status quo and prevent irreparable harm.

I. BACKGROUND

A. THE LIBRARY SIMPLY SEEKS TO PRESERVE THE STATUS QUO

The Campbell County Library was created in 1978 via petition pursuant to KRS 173.710 - .800. Included within those statutory provisions is 173.790 which states, in part, that an ad valorem tax levied by a library organized by petition cannot be increased or decreased without a petition signed by fifty-one percent (51%) of the registered voters voting in the last general election. At the time of its creation in 1978, the Library's ad valorem tax rate was set at \$0.30 per thousand dollars of assessed property valuation.

In 1979, the Kentucky General Assembly enacted House Bill 44, which dealt with ad valorem taxes for taxing districts. *Hallahan v. Sawyer*, 390 S.W.2d 664 (Ky. 1965). The provisions of House Bill 44 were codified in KRS Chapter 132 and state that **all taxing districts** shall levy ad valorem property tax rates based upon the compensating tax rate as set forth in KRS 132.010(6). The compensating tax rate, as calculated by the terms of KRS 132.010(6), is designed to produce approximately the same amount of revenue for the taxing district that it collected in the previous year. Due to the fluctuating assessment of real property, the compensating tax rate

will, of course, often fluctuate from year to year thus causing ad valorem tax rates to increase or decrease depending upon property assessments.

In Kentucky, libraries are taxing districts. See KRS 65.060; *Boggs v. Reep*, 404 S.W.2d 24 (Ky. 1966). Consequently, upon the enactment of House Bill 44 in 1979, the Kentucky Department of Libraries and Archives ("KDLA") directed all libraries in the Commonwealth of Kentucky (including all eighty library districts created via petition) to levy their ad valorem tax rates pursuant to the provision of KRS Chapter 132.¹ KDLA calculates the compensating tax rate for each district.² The Kentucky Department of Revenue, Office of Property Valuation directs each library, to provide each year's tax rate information to assist that agency's calculation of the compensating tax rate for each library.³

After the adoption of House Bill 44 as codified in KRS Chapter 132, and based upon the direction of KDLA and the Department of Revenue, the Library, along with all other public libraries in Kentucky, levied its ad valorem tax rate based upon the compensating rate as established by KDLA under the provisions of KRS Chapter 132. Utilizing this process, the Library's ad valorem tax eventually exceeded its 1978 rate of \$0.30 per thousand dollars of assessed property valuation beginning in 1994. In 2012, the Library's ad valorem tax rate was \$0.77 per thousand dollars of assessed property valuation.

¹ See July 18, 1979 memorandum from KDLA Director of Field Services Division Ellen Hellard to County Library Boards re: House Bill 44 attached as Appendix 1.

² See July 16, 2012 correspondence from KDLA to Campbell County Library attached as Appendix 2.

³ See July 9, 2010 correspondence from Kentucky Department of Revenue, Office of Property Valuation, to Campbell County Library attached as Appendix 3.

The Campbell County Library currently has three branches in Cold Spring, Fort Thomas, and Newport.⁴ During the past fiscal year, the three branches combined welcomed more than 600,000 visitors into their building and circulated in excess of 1 million items.⁵ In addition to books, the Library provides e-books and databases which are heavily utilized by school children, teens, and adults throughout Campbell County.

In addition to literacy support, the Library provides other community-oriented services which directly impact the educational enrichment of the community. Many of the patrons who enjoy these programs are young children participating in early childhood and reading activities. Additionally, the Library is an invaluable resource and site of operations for home school families to provide books, materials, curriculum packets, meeting spaces and programs for children who are being educated outside of the traditional classroom setting. The Library also provides computer access to thousands of County residents each year. Individuals living on a fixed income, whether due to retirement or other circumstances, cannot afford the luxury of having a computer or internet access in their home and rely upon the Library for computer usage as well as technical support.

Including the Campbell County Public Library, there are eighty (80) public libraries across the Commonwealth formed via petition and they too, since 1979, have followed state directives, calculations and guidelines and utilize the same method of taxation employed by the Library, pursuant to the provisions of KRS

⁴ See affidavit of Campbell County Executive Director, J.C. Morgan, attached hereto as Appendix 4.

⁵ *Id.*

Chapter 132. As is the case with the Campbell County Library, these other libraries have, over the past thirty years, expanded their operations and offerings in response to needs of their growing communities, and set their budgets and tax rates in good faith reliance upon the directives of KDLA and the Department of Revenue. Each of these libraries, indeed, Kentucky's entire state library system as a whole, is at risk if this Court refuses to maintain the status quo and grant this motion for intermediate relief.

B. PROCEDURAL HISTORY

On January 19, 2012, Plaintiffs filed a Class Action Complaint against the Library challenging the ad valorem tax rates it imposed since 1994 and seeking refunds on behalf of all property owners in Campbell County. Plaintiffs sought a Declaratory Judgment that the Library could only raise or lower its tax rate via petition per KRS 173.790 and that the provisions of KRS Chapter 132 did not apply. Plaintiffs also asserted claims for conversion, unjust enrichment, and unlawful taking under the 5th and 14th Amendments to the United States Constitution.

On February 1, 2012 the Library removed the Campbell Circuit Court action to the United States District Court, Northern Division at Covington, in light of the federal constitutional claims asserted in the Complaint. On February 22, 2012, the Library filed a Motion to Dismiss arguing that Plaintiffs could not bring a class action for a refund of ad valorem taxes because they had not exhausted their administrative remedies under KRS 134.590 and were further precluded from bringing a class action under Kentucky law. Plaintiffs did not object to the removal or seek a remand. On September 27, 2012, and prior to ruling on the Library's

motion, the Court *sua sponte* remanded the case to Campbell Circuit Court, opining that it was divested of jurisdiction under the Tax Injunction Act, 28 U.S.C. § 1341.

Upon remand, the parties entered into an Agreed Order holding the Library's Motion to Dismiss in abeyance. The Agreed Order further directed that the parties brief and argue the central question of whether the Library's ad valorem tax rates are governed by KRS 173.790 or the provisions of KRS Chapter 132 as plead in Count I of the Complaint. The parties fully briefed the matter and the Court conducted oral argument on February 12, 2013.

On April 1, 2013, the Campbell Circuit Court issued an Order denying the Library's Motion for Summary Judgment and granting Plaintiffs' Motion for Summary Judgment as to Count I of the Complaint.⁶ In its Order, the Circuit Court declared that the provisions of KRS Chapter 132 did not apply to the Library and that it could only raise and lower its ad valorem tax rate via petition pursuant to KRS 173.790.

On May 13, 2013 the Court ruled that there was no just reason to delay an appeal and made its Order final and appealable.⁷

The Library filed a Notice of Appeal from the Circuit Court's April 1, 2013 ruling on May 14, 2013.⁸

II. ARGUMENT

CR 76.33 grants appellate courts broad authority to grant intermediate relief to "accomplish any appropriate objective." 7 Kurt A. Philipps, Jr., David V. Kramer, &

⁶ Order attached hereto as Appendix 5.

⁷ Order attached hereto as Appendix 6.

⁸ Notice of Appeal attached hereto as Appendix 7.

David W. Burleigh, *Kentucky Practice*, Rules of Civil Procedure Annotated, Rule 76.33 (6th ed. 2005). The Library respectfully requests that the Court grant an order staying the enforcement of the Circuit Court's April 1, 2013 Order so that it may maintain its current tax rate and continue to provide the current level of services and offerings to the residents of Campbell County while this appeal is pending. As such, the Library merely seeks to maintain the status quo and prevent immediate and irreparable harm to the Library and the Campbell County community which has come to rely upon its services.

A. A STAY OF ENFORCEMENT IS NECESSARY TO PREVENT IRREPARABLE INJURY

CR 76.33 allows for intermediate relief upon a showing that the movant will suffer immediate and irreparable injury. The clearest example of irreparable injury is where it appears that the final judgment would be rendered completely meaningless should the probable harm alleged occur prior to trial. *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky. App. 1978).

The Circuit Court's Order in this case declared that the Library can only increase or decrease its ad valorem tax rate via petition pursuant to KRS 173.790. While not specifically stated in the Order, the natural application of this Order provides that any increases in the Library's tax rate set without petition pursuant to KRS 173.790 would be invalid. Moreover, the Order as applied means a roll back of the Library's ad valorem tax rate from its current rate of \$0.77 per thousand dollars of assessed property value to its 1978 petition rate of \$0.30 per thousand dollars, a reduction of more than 60%.

The consequential harm to the community from such a draconian slash in funding is significant, immediate, and will cause permanent losses to the Campbell County Library and the community it serves. If intermediate relief is not granted, the Library is faced with the reality of having to (1) close branches; (2) limit the hours of operations; and/or (4) deny services to sectors of the population that have come to rely upon this institution.⁹ Additionally, if this motion is denied, then the Library will also be forced to eliminate positions held by experienced and knowledgeable librarians and eliminate or restrict the public's use of meeting spaces, educational resources and computer technology.¹⁰ Herein lies the irreparable harm. Should the Library ultimately prevail in this appeal and obtain a reversal of the Circuit Court's Judgment, the devastation to Campbell County's library system will have already been complete and the damage irreversible. The only way to maintain the status quo, and to protect and preserve the community's library system while this matter is on appeal, is through the issuance of an Order staying enforcement of the Circuit Court Judgment pursuant to CR 76.33.

For more than thirty (30) years and pursuant to the direction of KDLA, the Library levied its ad valorem tax rate pursuant to the provisions of KRS Chapter 132. This method utilizes the compensating tax rate defined in KRS Chapter 132.010. Under this method, the Library's tax rate is based upon the revenue it collected for the previous year. Assuming, *arguendo*, that this Court reverses the Circuit Court's decision and rules that the Library properly set its tax rate pursuant to KRS Chapter 132, if it is required to set its tax rate at \$0.30, even for only one year, the

⁹ See Appendix 4.

¹⁰ *Id.*

compensating tax rate for future years will be based on the revenue collected under the \$0.30 rate and would stay at or near that level for the foreseeable future.

Under KRS 132.023, the Library can only exceed the compensating tax rate by four percent (4%) each year without being subject to a recall petition. Considering the fact that it took 34 years for the rate to go from \$0.30 to \$0.77 using the compensating tax rate, it would likely take another three decades to simply get back to the rate it operated under in 2012. In short, without intermediate relief, a subsequent victory on appeal would render the decision moot inasmuch as the Library will revert to its 1978 funding levels for the foreseeable future *even if Movant proves successful in this appeal.* This is the very essence of irreparable harm. As a result, the Court should stay the enforcement of the Circuit Court's Order to protect and preserve the status quo while the appeal is pending, and to ensure that any final adjudication is not rendered completely meaningless. *Maupin, supra.*

B. THE BALANCE OF EQUITIES FAVORS GRANTING INTERMEDIATE RELIEF

In addition to irreparable harm, equitable considerations should be evaluated when considering intermediate relief. *See Maupin*, 575 S.W.2d at 698. For example, the Court should examine the relative benefits and detriments of the requested relief. *Kentucky High School Athletic Association v. Hopkins*, 552 S.W.2d 685 (Ky. App. 1977). Obviously, this entails a consideration of whether the public interest will be harmed by the issuance of the relief or whether its effect will merely be to maintain the status quo. *Maupin, supra.*

Granting the Library intermediate relief would maintain the status quo and serve the public interest. There are no stated damages to Plaintiffs in the Circuit

Court's Order, and if any of them have suffered a financial harm in any way, that is easily rectified once this appeal has run its course. The Library, on the other hand, seeks only to maintain the current level of services, offerings, and educational opportunities presently offered to the public and which the public relies upon. The public interest that the Library seeks to preserve and protect exists in this community's pre-schoolers, school children, teenagers, young adults, college students, senior citizens, adults, educators, and the homebound. This population includes some of our most vulnerable citizens, as well as those who are self-sustaining, but desire community outreach, enrichment, and communion. Clearly, the public's interest in maintaining the status quo to preserve the service offerings to the more than 600,000 patrons who visit the Library on an annual basis outweighs the personal, pecuniary interests of the three Appellees.

Additionally, rolling back the tax rate from \$0.77 to \$0.30 per thousand dollars of assessed value would have the immediate and irreversible impact of converting the Library's operating revenue from \$4.6 million to \$1.6 million per year.¹¹ This would result in massive staff layoffs, salary cuts, reduced hours of operation and closure of branches.¹² Consequently, a balancing of the equities leans heavily in favor of staying the Circuit Court's decision, thus maintaining the status quo until final resolution of this action.

C. THE APPEAL RAISES A SUBSTANTIAL QUESTION ON THE MERITS.

Finally, intermediate relief is warranted in light of the substantial legal question presented in this appeal with respect to whether or not KRS Chapter 132

¹¹ See Appendix 4.

¹² *Id.*

applies to libraries in the same manner it applies to all other taxing districts in the Commonwealth. Indeed, this is a threshold issue that has now, by virtue of the Circuit Court's Order ruling, come to the forefront. The Circuit Court's Order jeopardizes the funding of virtually every public library in the Commonwealth, as many of these libraries were created under the same or similar statutory schemes, yet set their ad valorem tax rates based upon the provisions of KRS Chapter 132 as directed by KDLA and have done so for more than thirty years. The Circuit Court's novel conclusion that the Kentucky General Assembly, in enacting KRS Chapter 132 did not intend for that legislation to be comprehensive in scope and application (despite its stated intention otherwise) now has upended the certainty and consistency in funding and calculation of tax rates for all libraries throughout the Commonwealth.

**1. House Bill 44, later codified as KRS Chapter 132
supersedes and amends by implication KRS 173.790.**

Under Kentucky law, a statute may be amended by implication when the provisions of earlier and later statutes are repugnant to each other and irreconcilable, or when the subsequent statute covers the whole subject matter of the former and is manifestly intended as a substitute for it. *Hallahan v. Sawyer*, 390 S.W.2d 664 (Ky. 1965).

KRS 173.790 and KRS 132.023 offer two irreconcilable methods in which a library is to set its ad valorem property tax rate. KRS 173.790, enacted in 1964, states that libraries formed by petition can only change their ad valorem tax rate upon submitting a petition signed by fifty one percent (51%) of registered voters voting in the last general election. In 1979, the legislature passed House Bill 44

which included the language now codified in KRS Chapter 132 which directs all taxing districts (including libraries) to set their ad valorem tax rates based upon the compensating tax rate as defined in KRS 132.010.

Each statutory provision contains mandatory language that is incompatible with the other. Establishing a tax rate based on the compensating rate as defined in KRS 132.010 causes a taxing district's property rate to go up and down based upon the value of the assessed property. This directly conflicts with KRS 173.790 which would only allow a tax rate to change upon submission of a petition containing thousands of signatures. Consequently, it is quite impossible to harmonize and give effect to both of these provisions.

In *Fiscal Court of Jefferson County v. City of Anchorage*, 393 S.W.2d 608 (Ky. 1965), the court dealt with a similar issue. In that case, the General Assembly enacted Senate Bill 260, which gave the power to regulate zoning within cities of the sixth class to the fiscal court and the county judge. *Id.* at 611. This new law, however, conflicted with (then existing) KRS 100.500 which gave zoning power to the legislative bodies of cities of the third through sixth class. *Id.* The court found that the two laws were wholly inconsistent with each other and therefore ruled that the later-enacted provision amended and superseded any inconsistent statutes. *Id.*

A statute or law may also be amended or repealed by implication if a subsequent law covers the whole subject matter and is manifestly intended to serve as a substitute to inconsistent statutes. *Hallahan*, 390 S.W.2d at 665. KRS Chapter 132 repeals or amends all other inconsistent statutes by implication because it covers the whole subject matter with respect to the levying of ad valorem tax rates

for taxing districts. The language in KRS Chapter 132 refers to all taxing districts, without limitation or exclusion. *See, e.g.*, KRS 132.023,¹³ 132.010(6).¹⁴ This includes detailed and comprehensive procedures for ad valorem taxation for taxing districts including deadlines for setting rates (132.0225), recall petitions (132.017), and reductions of tax rates on personal property (132.018). As such, it clearly covers the whole subject matter with respect to taxing districts setting ad valorem property tax rates.

When a statutory scheme covers the whole area of a subject matter, it serves to supersede even more specific statutes previously enacted. In *Fiscal Court Commissioners of Jefferson County v. Jefferson County Judge/Executive*, 614 S.W.2d 954 (Ky. App. 1981), the Court of Appeals held that the revisions to KRS 67.710, which said the Judge/Executive could not make appointments without Fiscal Court approval, repealed by implication any statutes that vested sole appointment power with the Judge/Executive. In their ruling, the Court noted that KRS 67.710 was a broad statute and that more specific statutes with respect to certain boards existed giving the Judge/Executive sole appointing authority. *Id.* at 958 – 959. However, the Court determined that because the revised KRS 67.710 covered the whole subject area with respect to appointments by the Judge/Executive, the inconsistent statutes were repealed by implication even though they were more specific. *Id.* Likewise, because the provisions of KRS Chapter 132 cover the whole subject matter

¹³ No **taxing district** ... shall levy a tax rate which exceeds the compensating tax rate defined in KRS 132.010, until the taxing district has complied with the provisions of subsection (2) of this section. (Emphasis added).

¹⁴ Defines "compensating tax rate as... "...that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a **taxing district**... (Emphasis added)

with respect to ad valorem taxation for taxing districts, it supersedes KRS 173.790 despite the fact that 173.790, on its face, is the more specific statute.

2. Administrative agencies and Kentucky Courts Interpret KRS Chapter 132 as governing libraries' ad valorem tax rates.

Under Kentucky law, courts must accord great deference to an administrative agency's interpretation of a statute within its specific province. *Com. Ex rel. Beshear v. Kentucky Utilities Co.*, 648 S.W.2d 535, 537 (Ky. App. 1982). A construction of a law by an administrative agency of the executive branch continued without interruption for a long period of time is entitled to controlling weight. *Hagan v. Farris*, 807 S.W.2d 488, 490 (Ky. 1991) (citing *Barnes v. Department of Revenue*, 575 S.W.2d 169 (Ky. 1978)). This principle of law is established by a long history of Kentucky jurisprudence and emanates from the doctrine of separation of powers, which recognizes that the judiciary must give deference to the discretionary, decision-making powers of the executive branch of government. *Hagan, supra*.

Upon the enactment of House Bill 44, KDLA directed all public libraries, including the eighty library districts created via petition, to set their ad valorem tax rates based upon the provisions of KRS Chapter 132.¹⁵ This direction continues today and, upon information and belief, *every* library in the Commonwealth of Kentucky that levies an ad valorem property tax does so following KRS Chapter 132. In fact, KDLA actually calculates each library's compensating tax rate pursuant to KRS Chapter 132.010 with assistance from the Department of Local Government.¹⁶ In addition, the Kentucky Department of Revenue, Office of Property Valuation,

¹⁵ See Appendix 1.

¹⁶ See Appendix 2.

directs libraries to provide each year's tax rate information to assist in calculating the compensating tax rate for the following year.¹⁷

In 1995 the Kentucky Attorney General also weighed in and held that libraries are governed by KRS Chapter 132. That year, the Casey County Library asked the Attorney General whether KRS 173.790 or Chapter 132 governed with respect to establishing ad valorem tax rates. The Attorney General responded with a letter stating:

We do not believe that the General Assembly intended library districts to be exempt from the provisions of House Bill 44. The relevant provision in KRS 173.790 has existed since the statue's creation in 1964. House Bill 44 was enacted in 1979. In its original form, KRS 132.023 included the phrase "notwithstanding any statutory provisions to the contrary." These observations compel us to conclude that the legislature was aware of the library tax provision when it enacted House Bill 44 and it did not intend that the older library tax provision override the newly enacted House Bill 44. Indeed, this has been the construction acquiesced in during the sixteen years since House Bill 44 was enacted.¹⁸

In addition to the multitude of executive branch administrative agencies, Kentucky appellate courts are consistent in holding that libraries are subject to the provisions of KRS Chapter 132. For example, in *LFUCG v. Hayse*, 684 S.W.2d 301 (Ky. App. 1984), the Court of Appeals held that the provisions of Chapter 132 apply to public libraries despite contrary language in KRS 173.360. And, in *Daviess County Public Library Taxing District v. Boswell*, 185 S.W.3d 651 (Ky. App. 2005), the Court of Appeals held that the Daviess County Library District was subject to the provisions of KRS 132.023.

¹⁷ See Appendix 3.

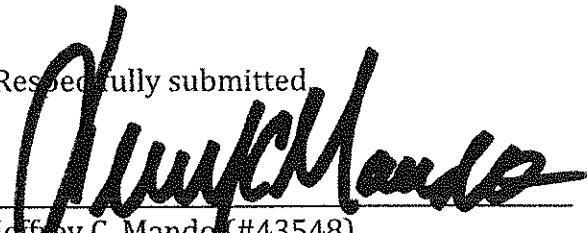
¹⁸ May 8, 1995 Letter from Asst. Attorney General Ross T. Carter to Jan J. Banks attached as Appendix 8.

Since the passage of House Bill 44 in 1979, Kentucky executive branch administrative agencies and Kentucky appellate courts unanimously agree that KRS Chapter 132 governs the establishment of ad valorem tax rates for libraries, thereby establishing that KRS 173.790 was superseded and amended by implication. Yet, inconceivably, the Circuit Court, departing from this well-established precedent, has issued a ruling that is legally incorrect and which trumps the discretionary, decision-making authority of the executive branch administrative agencies which were tasked with the responsibility to interpret and apply KRS Chapter 132. Thus, it is essential that this Court, during the pendency of the appeal, stay enforcement of the Circuit Court's Order in order to preserve the status quo, and to re-affirm and re-establish the separation of powers among the respective branches of government.

III. RELIEF SOUGHT

In light of the foregoing, Movant, the Campbell County Library Board of Trustees, respectfully requests that this Court grant its Motion and issue an Order pursuant to CR 76.33 staying enforcement of the Court's April 1, 2013 ruling, thus allowing Movant to maintain its current ad valorem tax rate during the pendency of the appeal.

Respectfully submitted



Jeffrey C. Mando (#43548)

Louis D. Kelly (#92094)

ADAMS, STEPNER,

WOLTERMANN & DUSING, PLLC

40 West Pike Street

Covington, KY 41012

859.394.6200

jmando@aswdlaw.com

lkelly@aswdlaw.com

*Attorneys for Defendant, Campbell County
Library Board of Trustees*

APPENDIX

1. July 18, 1979 Memorandum from KDLA to County Library Boards regarding House Bill 44
2. July 16, 2012 correspondence from KDLA to Campbell County Library
3. July 9, 2010 correspondence from Kentucky Department of Revenue to Campbell County Library
4. Affidavit of J.C. Morgan, Campbell County Executive Director
5. April 1, 2013 Order of Campbell Circuit Court
6. May 13, 2013 Order of Campbell Circuit Court
7. Notice of Appeal
8. May 8, 1995 correspondence from Asst. Attorney General Ross T. Carter to Jan J. Banks

Kentucky Department of Libraries
P. O. Box 537
Frankfort, Kentucky 40601

M E M O R A N D U M

TO: County Library Boards, Taxing Districts

FROM: Ellen Hellard, Director *Ellen Hellard*
Field Services Division

RE: House Bill 44

DATE: July 18, 1979

During the 1979 Special Session of the General Assembly, House Bill 44 was passed. This bill's purpose is to control the amount of revenues collected from taxes on real property. It places a ceiling of up to 4 percent that any taxing unit may collect in revenue on "old" property, provided the county's assessment increased by 4 or more percent, without being subject to referendum. Your regional librarian will be provided with a copy of the full bill, if you wish to read it. A copy of the portion pertaining to special districts is attached. The language is "legalese", but boils down to certain actions which must be taken by the taxing unit.

K.R.S. 132.023 is the section applying to special districts. As we can best ascertain, the library districts will have to comply with these provisions. The law requires that the district 1) determine the tax rate, and, 2) certify the rate to the County Clerk. A "hold harmless" provision guarantees that your revenue will not be lower than the previous year.

The compensating tax rate is based on a combination of old and new property assessments in any one year. The rate is worked on a formula, of which your regional librarian has a copy. However, to save time and trouble, we have asked the State Local Finance Officer to figure these rates for you, as he figures the county's general fund rate. By law, he must certify the county's rate, and has agreed to do this for library and health districts as well. We will send these as soon as we receive them. The rates are rounded to the highest tenth.

You have the option of choosing one of three rates. The first rate [Section 4 (1) (2)] is the "compensating rate" which is based on last year's revenue and this year's new growth. The amount of total revenue will probably be higher, although the actual rate might decrease. If you choose this rate, you need only notify the County Clerk.

The second rate [Section 4 (2) (3a-d)] provides up to a 4 percent increase in revenue on old property and then includes that rate applied to new assessment growth. The amount of revenue would probably increase, as well as the rate. However, this option is applicable only if the assessment on old property increased up to 4 percent. If the assessment did not rise, or for example, only by 3 percent, the rate and revenue could only reflect that percentage of increase. If this option is taken, the taxing unit must give notice of and hold a public hearing to justify the need for the increase. Explicit instruction on this appears in the law. The hearing may be held at a regular board meeting at the library. Then the County Clerk would be notified of the rate.

The third rate [Section 4 (a-b)] is the maximum rate as voted when the district was established or as rolled back. This rate would be applied to the full county assessment as has been the case in previous years. If this option is taken, the notice and holding of hearing is required, and the rate is subject to recall for 45 days [Section 8]. If a petition is properly submitted so requesting a recall, the question would be placed on the ballot for vote. The recall could not cause a decrease below last year's income or the compensating rate.

Once you have established your rate, that rate will be used as the maximum rate for figuring the compensating rate in the succeeding year [Section 4 (1) (b)]. Your voted rate will mean nothing unless you choose the third or maximum rate option now.

There are difficult decisions to be made. For counties with little increase in assessment, there will be little or no change. Counties which have large reassessments will suffer unless they take the maximum rate, because the compensating rate is almost sure to be lower than the voted rate and once the compensating rate is taken, it's the new maximum.

You will have to give careful consideration to your plans for future growth of your library program. If you are considering a new building, increased staff, increased space, operational budget--you will have to look carefully at the third rate as your option, as this will certainly provide the most revenue. If you have a solid program going and feel you can live with the smaller increases

Memo
House Bill 44
July 18, 1979
Page 3

provided by the first and second options, you have an easier decision. The problem with the third rate option is the possibility of the recall which calls for the question to appear on the ballot of the next general election. It is our understanding that this could hold up all tax bills from being written in a county, until the election is held. Obviously the other taxing districts would suffer because of the delay in collecting taxes. You should check this out with your County Clerk to be sure.

To obtain the information required for the hearing notice, you should see the tax property valuation administrator or county clerk who should be able to provide the assessment figures you will need.

Enclosed is a certification notice for your use. I am requesting that you send a copy of this signed certification to this office, there are extra copies for the county clerk and your files. We want to know what rate you set for statistical purposes, as we use these figures for statewide reports. I appreciate your cooperation.

I sincerely hope this explains the situation somewhat. It's very difficult to describe. I suggest strongly that you notify the county clerk that you will be providing a rate, if you haven't already done so. You certainly don't want to be left off the tax bills entirely. Best wishes in your decision and please call on us for further help--your regional librarian is also available.

You will note that the County Clerk is to receive the certification. This is again our best judgement, as the bill does not specify to whom this should go. However, the Clerk must prepare the tax bills and will have to have the proper rate. You may wish to also present your certification to the County Judge Executive and/or Fiscal Court. Please use your own good judgement about this.



EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Department for Libraries & Archives

Steven L. Beshear
Governor

PO Box 537
300 Coffee Tree Road
Frankfort, KY 40602-0537
(502) 564-8300
Fax: (502) 564-5773
<http://kdla.ky.gov>

Joseph U. Meyer
Secretary

Wayne Onkst
State Librarian

MEMORANDUM

TO: Board of Trustees and Director, Campbell County Public Library District
FROM: Charlene Davis, Field Services Director
RE: 2012 Tax Rates
DATE: 7/16/2012

Charlene Davis

On the enclosed TAX RATE NOTIFICATION you will find sample tax rates for your public library district. These rates have been computed from the certified property assessment figures provided by the KY Department of Revenues for this purpose in accordance with KRS 133.180. Information on how the tax rates are computed may be found in KRS 132.010. Two sets of sample rates have been calculated for your district, as required by statute.

Your Board of Trustees may adopt a tax rate other than one of the sample rates.

When setting your tax rates, please keep in mind the following information:

- If you select a rate, either REAL or PERSONAL, which exceeds the compensating rate, you are required to advertise and hold a public hearing before certifying your rate to your County Clerk (KRS 132.023).
- No advertisement or hearing is required if the compensating rate, or a rate less than the compensating rate, is adopted (KRS 132.023).

Your Board of Trustees has the option of adopting a REAL or PERSONAL rate which is different from either the compensating or 4% rates. If you desire information on possible alternative rates we will compute such rates for your district upon written (emailed) request.

One copy of the form "PROPERTY TAX RATE CERTIFICATION" is included for your use in certifying your rate to the County Clerk. The upper portion of the form must be completed by your Board of Trustees and filed with your County Clerk. The County Clerk will fill in and sign the bottom part of the form.

You will need to make two additional copies for distribution, as follows:

One copy is to be delivered to the County Clerk.
One copy is to be mailed to:

Terry L. Manuel
Property Tax Rate Computation
Kentucky Department for Libraries & Archives
P.O. Box 537
Frankfort, KY 40602-0537

One copy is to be retained by the library district.

Please call Terry L. Manuel at 502-564-8300, extension 269 or email Terry.Manuel@ky.gov if you have any questions. Thank you.

KentuckyUnbridledSpirit.com



An Equal Opportunity Employer M/F/D

Tax Calculation for 2012
Fiscal Year 2012-2013

| | | |
|----------------------|-----------------------|--------------------------|
| LIBRARY DISTRICT: | Campbell Co. | |
| | Comp Tax ¹ | 4% Increase ² |
| REAL PROPERTY | | |
| TAX RATE | 7.7 | 8.0 |
| GROSS REVENUE | \$ 4,096,652 | \$ 4,256,261 |
| PERSONAL PROP. | | |
| TAX RATE | 10.62 | 11.04 |
| GROSS REVENUE | \$ 503,394 | \$ 523,303 |
| SUB TOTAL | \$ 4,600,046 | \$ 4,779,564 |
| MOTOR VEHICLE | | |
| TAX RATE | 2.60 | 2.60 |
| GROSS REVENUE | \$ 146,994 | \$ 146,994 |
| TOTAL REVENUE | \$ 4,747,040 | \$ 4,926,558 |

1. No public hearing required – no recall.

2. Public hearing required if higher than 1 - no recall

NOTE: The 1990 General Assembly amended KRS.132.024 permitting a taxing district to "levy a tax rate applicable to personal property which will produce the same percentage in revenue from personal property as the percentage increases in revenue from real property." This year your tax rate on personal property may be levied at 10.62 cents if you select the compensating rate of 7.7 cents on real property. You may levy a tax rate of 11.04 cents on personal property if you select the 4% tax rate or 8.0 cents on real property.

NO PUBLIC HEARING IS REQUIRED ON PERSONAL PROPERTY TAX RATES

Please note: Your county "property tax roll" or assessment was certified by the Kentucky Revenue Cabinet on: 12-Jul-2012

Please contact this office if you have any questions:

Terry Manuel
Kentucky Department for Libraries & Archives
P.O. Box 537
Frankfort, KY 40602-0537
502-564-8300, ext. 269
Terry.Manuel@ky.gov

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
OFFICE OF PROPERTY VALUATION
PUBLIC SERVICE SECTION
Station 32 4th Floor, 501 High Street
Frankfort, KY 40620
Phone (502) 564-8175 Fax (502) 564-8192

July 9, 2010

J C MORGAN
LIBRARY DIRECTOR
COLD SPRING BRANCH
3920 ALEXANDRIA PIKE
COLD SPRING, KY 41076-1800

CAMPBELL COUNTY - LIBRARY

+++++ FIRST REQUEST +++++

RE: Request for 2010 Kentucky Property Tax Rates - Regular & Local Option

This correspondence is an official request for your 2010 tax rate information. The Department of Revenue, Office of Property Valuation must annually collect the current real and personal property tax rates imposed by all taxing jurisdictions legally established within the Commonwealth of Kentucky. Due to the fact that these rates are used by the Department of Revenue to calculate your taxes, it is imperative that your compliance with this request be accurate and timely.

Please be advised that the Department of Revenue operates numerous computer systems that contain local tax rate information. These systems are maintained for the purpose of assessing, certifying and/or collecting and distributing current and omitted personal and real property taxes and public service company (franchise) property taxes for which the local governments are the primary recipients. Furthermore, the Department organizes the tax rate information to produce an annual publication for public use called the 'Kentucky Property Tax Rates'.

To comply with our request, please complete and return the following documents to the Department of Revenue by November 3, 2010 or as soon as your rates are final:

- 1) the enclosed schedule, completed in its entirety;
- 2) an official copy of the final tax ordinance or minutes that established your 2010 tax rate(s);
- 3) FOR CITIES ONLY:**
a copy of a 2010 real property tax bill and a personal property tax bill that illustrates your tax rate(s).

Failure to provide your tax rate information could jeopardize the collection and distribution of state and local tax dollars to your jurisdiction. If your tax rates have not been set, please remit the information as soon as it is available. If you need to refer to your 2009 tax rates, please visit the DOR web site <http://revenue.ky.gov/pvanetwork/> to view the 2009 tax rate book. If you have any questions or need assistance regarding this matter, please contact Kathy Goin (502) 564-7099 or Jonathan Johnson (502) 564-7122. Thank you for your time and immediate attention to this matter.

Sincerely,

State Valuation Branch
Office of Property Valuation

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION 1
CASE NO.: 12-CI-0089

CHARLIE COLEMAN, et al.

PLAINTIFF

vs.

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

DEFENDANTS

AFFIDAVIT OF J.C. MORGAN

Having first been duly cautioned and sworn, the undersigned, J.C. Morgan, states for his Affidavit as follows:

1. I, J.C. Morgan, am the duly appointed Director of the Campbell County Public Library.
2. The Campbell County Public Library was formed in 1978 by a petition of the people in Campbell County under KRS 173.710-800. At that time the operating budget was approximately \$200,000. The tax rate was 3.0 cents per \$100 of valuation for real property.
3. Beginning in 1979 and following the passage of HB 44, the Campbell County Library was directed by the Kentucky Department of Libraries and Archives ("KDLA") and other state agencies to begin levying its ad valorem property tax rates pursuant to the requirements of KRS Chapter 132.
4. The Library currently has three branches in Cold Spring, Fort Thomas, and Newport. These three branches serve 73,000 people within their combined five mile service radii. There are 60,000 cardholders with the Library. In the past fiscal year, the Library

circulated over 1 million items, conducted about 1600 programs for the public, and received 629,000 visits.

5. There are approximately 83 staff members serving the Campbell County taxpaying community. These staff members are responsible for: circulation of books, magazines, and other public resource materials; processing of library resources; administration; public relations; reference and research assistance to the public; communications, literacy and outreach services, as well as public programming. The Library has a collection of approximately 260,000 physical items and 47,000 digital items (as part of a statewide consortium) that are all made available to and for the public on a daily basis. Staff members also assist people of all generations, income levels, and ages who use our facilities; parents who home school their children; children of all ages who are working on school projects; teachers seeking educational resources; and community organizations seeking a quiet place to meet and conduct business.

6. Current revenue used to provide the public, governmental services outlined in paragraph 5 are approximately \$4.6 million. The bulk of this revenue (approximately 93%) comes from tax revenues on real property located in Campbell County. The tax rate on real property is 7.7 cents per \$100 of valuation.

5. If the Campbell County Library were to revert to 3.0 cents per \$100 of valuation for real property, the effect on present public offerings and operations would be devastating, as the estimated revenue would decrease from \$4.6 million to \$1.6 million per year.

6. Since 1979, financial institutions have entered into lease agreements with the Campbell County Library to finance necessary public library services. The financial institutions obtained separate legal opinion through bond counsel as to the Library's legal ability to collect

tax revenue and its financial sustainability prior to issuing the bonds. Currently, the Library is obligated to pay existing debts and to carry a tax rate which would meet these obligations. Approximately \$300,000 annually is expended for debt retirement. Elimination of the Library's tax revenue will not extinguish these obligations, and these constitute a debt owed by the Library and by extension, the Campbell County taxpayers until the leases are legally retired as paid in full.

7. In order to maintain current necessary library services in Campbell County, a fair amount of unavoidable administrative costs have to continue to be paid regardless of the revenue stream. The Library, for example, would have to continue to pay for such administrative costs as support for its computerized catalog and circulation system; the annual audit of its funds; insurance; and other such items — all of which are subject to increases due to inflation. Administrative costs are approximately \$150,000 annually.

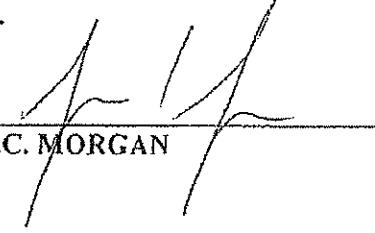
8. Rolling back tax rates to 1978 levels would result in the Campbell County Library being unable to sustain operations at three separate branches in the county. Operating two branches with reduced hours might be possible but library programming, community outreach, and literacy programs would disappear. Of the present staff of 83, only a skeleton crew of 30 would remain. Those 30 would sustain steep cuts to present salaries, which in turn may affect the Campbell County Library's ability to hire and retain high quality, educated and trained personnel who are committed to providing effective and efficient public library services to the Campbell County community.

9. Decreasing operations to only two branches throughout the entire Campbell County area would place the entire burden of circulating over 1 million items and serving 629,000 visitors annually onto two facilities. Annual utility costs at each of the two locations are

estimated at about \$50,000 each per year (electricity and telecommunications are the biggest part of these costs). Equipment needs (again for each branch) will be stressed, and annually are estimated will be about \$30,000 (computers, furniture, and similar items). Building repair and maintenance will increase at each location with the increased wear and tear.

10. Any decrease in tax revenue will result in a decrease if not complete elimination of necessary public library services to the Campbell County taxpaying public. Staff hours will have to be reduced, and the Library's ability to provide new resources and materials will end. Operating with a minimal level of supervisory/administrative staff and relying heavily on part time employees will decrease the Library's responsiveness to the public that it serves. Using this scenario, the Library's operating hours would be reduced from seven days and 70 hours per week to six days and 48 hours per week. Again, the problem of placing the library's present operations into two branches and into reduced hours imposes a significant disservice to the public who greatly enjoy and utilize that service now.

FURTHER AFFIANT SAYETH NAUGHT.


J.C. MORGAN

COMMONWEALTH OF KENTUCKY)
) :ss
COUNTY OF CAMPBELL)

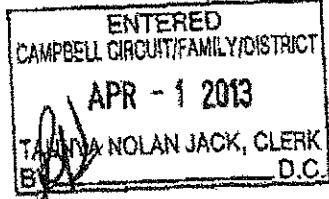
SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public, by
J.C. Morgan, this 21st day of December, 2012.

Dawn C Naupet
NOTARY PUBLIC
COMM. EXPIRES: August 10, 2013

853748.2

853748.2
12/20/2012

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION 1
CASE NO. 12-CI-0089



CHARLIE COLEMAN, *et al.*

PLAINTIFFS

v.

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

DEFENDANT

ORDER

This matter is before the Court on the Defendant's Motion for Summary Judgment on Count I of the Plaintiffs' Complaint which the Defendant, Campbell County Library Board of Trustees, filed on November 21, 2012. The Plaintiffs, Charlie Coleman, *et al.*, filed a Response and a Counter Motion for Summary Judgment as to the Declaratory Action (Count I) on December 7, 2012. The Defendant filed a Reply on December 26, 2012. On February 12, 2013, the Parties appeared before the Court for oral argument.

BACKGROUND

The Campbell County Library system is funded, in large part, through taxes collected from landowners in Campbell County. The amount a landowner owes towards the Library Tax is proportional to the assessed value of the landowner's property. A tax which is proportional to property value is known as an ad valorem tax. This case involves a dispute between the Campbell County Library Board of Trustees ("the Library") and a group of Campbell County landowners ("the Taxpayers") over increases in the Library's ad valorem tax rate ("the Library

Tax Rate"). Specifically, the parties dispute which statute governs the procedure for increasing the Library Tax Rate. The Library argues that KRS Chapter 132 governs the Library Tax Rate. The Library further argues that the Library Tax Rate must be set according to the formula for a "Compensating tax rate" as defined in KRS 132.010(6). The Taxpayers argue that KRS 173.790 governs the Library Tax Rate. The Taxpayers further argue that the Library Tax rate cannot be increased unless the petition procedures of KRS 173.790 are followed. In their motions, the Parties have asked this Court for a declaratory judgment as to which statute governs the Library Tax Rate.

HISTORY

The Campbell County Library was created in 1978 via petition pursuant to KRS 173.710 - .800. Included within those statutory provisions is KRS 173.790 which states, in part, that an ad valorem tax levied by a library organized by petition:

... shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election.

In 1979, the Kentucky General Assembly enacted House Bill 44. As stated in the Preamble to the Act, House Bill 44 was enacted with the intent of reducing "the impact of inflation on property taxes, both state and local, without reducing necessary governmental services." After the adoption of House Bill 44, codified in KRS Chapter 132, the Library began levying its ad valorem tax rate based upon the formula for a "Compensating tax rate" as set forth in KRS 132.010. KRS 132.010 defines "Compensating tax rate", in part, as:

... that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to

taxation by a taxing district, . . . produces an amount of revenue approximately equal to that produced in the preceding year from real property. . .

In other words, the "Compensating tax rate" adjusts based on property value fluctuations in order to provide consistent tax revenues from year to year. The Library argues that they set the Library Tax Rate according to the formula for "Compensating tax rate" because of KRS 132.023. KRS 132.023 states, in part:

No taxing district . . . shall levy a tax rate which exceeds the "Compensating tax rate" defined in KRS 132.010, until the taxing district has complied with the provisions of subsection (2) of this section.

At the time of the Library's creation in 1978, the Library Tax Rate was set at \$0.30 per thousand dollars of assessed property valuation. The Library Tax Rate has continued to increase until 2010 when it reached a high of \$0.72 per thousand dollars of value. As of 2011, the Library Tax Rate was set at \$0.457 per thousand dollars of value.

ANALYSIS

Summary judgment is appropriate where the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56.03. The issue before the Court is purely a matter of statutory interpretation; statutory interpretation is a question of law and, therefore, summary judgment is appropriate. Neurodiagnostics, Inc. v. Kentucky Farm Bureau Mut. Ins. Co., 250 S.W.3d 321 (Ky.2008).

The Library argues that administrative agencies in Kentucky interpret KRS Chapter 132 as governing a library's ad valorem tax rate and that this Court should give deference to those agency interpretations. As to questions of fact or the exercise of discretion by an administrative agency, judicial review is limited to whether the agency's decision was supported by substantial

evidence or whether the decision was arbitrary or unreasonable. Carter v. Craig, 574 S.W.2d 352 (Ky.App. 1978). However, statutory construction is a matter of law for the courts, and a reviewing court is not bound by an administrative body's interpretation of a statute. Delta Air Lines, Inc. v. Commonwealth Revenue Cabinet, Ky., 689 S.W.2d 14 (Ky.1985). Furthermore, an unambiguous statute is to be interpreted without resort to any outside aids. Gateway Construction Company v. Wallbaum, 356 S.W.2d 247 (Ky.1962). The issue in the present case is clearly one of law and the statutes involved are unambiguous. Therefore, this Court will interpret the statutes *de novo*.

Where two statutes are in apparent conflict, and their inconsistencies cannot be reconciled, "the one containing express and positive language relating to the particular subject should take precedence over a provision dealing with a matter in general terms." Commonwealth v. Martin, 777 S.W.2d 236 (Ky.App.1989). Moreover, it is the Court's duty to harmonize the law so as to give effect to both statutes. Allen v. McClendon, 967 S.W.2d 1 (Ky.1998). KRS 173.790 specifically refers to the "special ad valorem tax rate for the maintenance and operation of a public library district." KRS 132.023 and KRS 132.010 refer generally to taxing districts. Since KRS 173.790 specifically addresses the procedure for increasing or decreasing the Library Tax Rate, it must control over the general provisions of KRS Chapter 132. This interpretation gives effect to both statutes and prevents KRS 173.790 from being meaningless.

The Library argues that KRS 173.790 was repealed by implication when House Bill 44 was passed in 1979. This Court does not agree. A statute may be repealed by the express provision of a subsequent statute or by implication when the provisions of the earlier and later statutes are repugnant to each other and irreconcilable or when the subsequent statute covers the whole subject-matter of the former and is manifestly intended as a substitute for it. Hallahan v.

Sawyer, 390 S.W.2d 664 (Ky.1965). However, it is a well-settled rule of statutory construction that the repeal of an existing law by implication is not favored by the courts and a legislative enactment will not be interpreted as repealing by implication a prior statute unless the repugnancy is so clear as to admit no other reasonable construction. Tipton v. Brown, 126 S.W.2d 1067 (Ky.1939). Courts will presume that where the legislature intended a subsequent act to repeal a former one, it will so express itself so as to leave no doubt as to its purpose. Oldham County v. Arvin, 64 S.W.2d 907 (Ky.1933). As noted in Hardaway Management Co. v. Southerland, Ky., 977 S.W.2d 910 (Ky.1998), it is a maxim of statutory construction that repeal by implication is not favored and will not be upheld unless such intention clearly appears or unless the repugnancy is so clear as to admit no other reasonable construction. City of Eddyville v. City of Kuttawa, 343 S.W.2d 404 (Ky.1961).

This Court does not believe that KRS 173.790 and KRS Chapter 132 are repugnant and irreconcilable. The statutes can be reasonably construed in a manner that gives both statutes meaning and House Bill 44 contains no clear expression of intent to repeal KRS 173.790. Adopting the Library's view would render KRS 173.790 meaningless. Furthermore, this Court does not believe that KRS Chapter 132 covers the whole-subject matter of ad valorem tax rates to such an extent that it is manifestly intended as a substitute for KRS 173.790. Pursuant to KRS 173.790, a library tax created by a petition of the people of a county can only be changed by a petition of the people of that county. There is a certain logic to this procedure and there is no manifest indication that the Kentucky State Legislature intended that House Bill 44 take this power away from the people. For these reasons, this Court does not believe that House Bill 44 repealed KRS 173.790 by implication.

As further evidence of statutory meaning and legislative intent this Court looks to House Bill 36 enacted in 1984. House Bill 36 amended two statutes relevant to this case. House Bill 36 amended KRS 173.720 to state, in part:

Districts organized pursuant to the provisions of this section prior to July 13, 1984, shall be governed by the provisions of KRS 173.710 to 173.800.

Furthermore, House Bill 36 amended 173.790 to state, in part;

The special ad valorem tax rate for the maintenance and operation of a public library district created pursuant to KRS 173.710 to 173.800 before July 13, 1984, shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election in each county in the district . . . (emphasis added).

The only amendment to KRS 173.790 was the addition of the phrase "before July 13, 1984." Surely the legislature would not have added language to a statute they already intended to have been repealed by implication and thereby rendered meaningless. Moreover, KRS 173.720 was amended to state in no uncertain terms that library districts organized pursuant to KRS 173.720 (such as the Campbell County Library District) shall be governed by the provisions by the provisions of KRS 173.710 to 173.800. (Emphasis added). In KRS 446.010(29), our legislature pronounced that in statutory construction, "shall" is a mandatory term. In addition, KRS 446.080(4) provides that words and phrases are to "be construed according to the common and approved usage of language" unless a word has a certain technical meaning. The statutory language of KRS 173.720 and 173.790 is clear and unambiguous. The Library Tax Rate shall be governed by KRS 173.790. Wherefore;

IT IS ORDERED that Defendant's Motion for Summary Judgment as to Count I is Overruled and the Plaintiff's Motion for Summary Judgment as to Count I is Sustained. Furthermore, the parties are ordered to come before the Court on April 25, 2013 at 9:00 A.M. for a Status Conference.

DATED: 3-29-13


JUDGE JULIE REINHARDT WARD

CC: Counsel of Record

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION 1
CASE NO. 12-CI-0089

| | |
|--------------------------|----------------------------------|
| ENTERED | CAMPBELL CIRCUIT/FAMILY/DISTRICT |
| MAY 13 2013 | |
| TAMINA NOLAN JACK, CLERK | |
| BY | D.C. |

CHARLIE COLEMAN, *et al.*

PLAINTIFFS

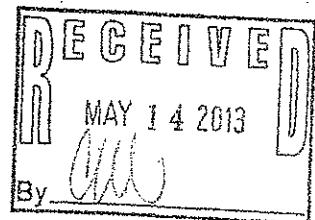
v.

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

DEFENDANT

ORDER

This matter is before the Court on the Plaintiffs' Motion to Escrow and the Defendant's Motion to Make the Court's Ruling Final and Appealable. The Plaintiffs, Charlie Coleman, *et al.*, filed their Motion for an Order Requiring the Campbell County Library Board of Trustees to Escrow All Tax Payments Received in Excess of \$0.30 Per Thousand of Assessed Value on April 3, 2013. The Defendant, the Campbell County Library Board of Trustees, filed their Motion to Make the Court's Ruling of April 1, 2013 Granting Plaintiffs' Motion for Summary Judgment on Count I of the Complaint Final and Appealable on April 11, 2013. The Defendant filed their Response in Opposition to Plaintiff's Motion to Escrow on April 12, 2013. The Plaintiff filed their Response in Opposition to Defendants' Motion to Make the April 1, 2013 Order Final and Appealable and Reply in Support of Plaintiff's Motion to Escrow on May 3, 2013.



Kentucky Civil Rule 54.02 states as follows:

- (1) When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.
- (2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are not specifically disposed of in such final judgment.
- (3) For the purposes of this rule demands in an action for both injunctive relief and damages may be treated as separate claims.

In Preferred Risk Mut. Ins. Co. v. Kentucky Farm Bureau Mut. Ins. Co., 872 S.W.2d

469 (Ky. 1994) the Kentucky Supreme Court addressed the issue of whether a declaratory judgment could be final and appealable judgments under CR 54.02 when the declaratory action was combined with other claims. In Preferred Risk the Court stated that, while the mere recitation of the "final and appealable" provision of CR 54.02 is not determinative of the matter, KRS 418.040 nonetheless states that if an actual controversy exists,

... the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, *whether or not consequential relief is or could be asked.*
(Emphasis added.)

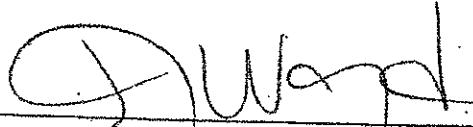
The Court in Preferred Risk went on to hold that the trial court was empowered to denominate the declaratory judgment portion of its adjudication as final and appealable notwithstanding the possible necessity of further proceedings between the parties to assess damages.

Wherefore;

IT IS ORDERED that the Defendant's Motion to Make the Court's Ruling of April 1, 2013 Granting Plaintiffs' Motion for Summary Judgment on Count I of the Complaint Final and Appealable is **Sustained**. There is no just reason for delay and the Court's Order of April 1, 2013 granting the Plaintiffs' Motion for Summary Judgment on Count I of the Complaint is a final and appealable order.

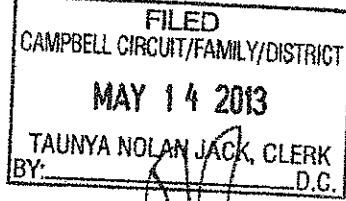
IT IS FURTHER ORDERED that all other motions are stayed pending the appeal.

DATED: 5-10-13


JUDGE JULIE REINHARDT WARD

CC: Counsel of Record

COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION I
CASE NO. 12-CI-0089



CHARLIE COLEMAN, JOHN P. ROTH AND
ERIK HERMES ON BEHALF OF THEMSELVES AND
OTHERS SIMILARLY SITUATED

PLAINTIFFS

v.

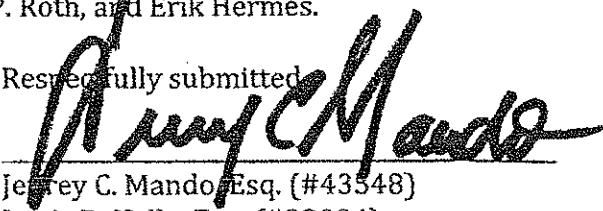
CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

DEFENDANT

NOTICE OF APPEAL

Notice is given that the Defendant, Campbell County Library Board of Trustees, hereby appeals to the Kentucky Court of Appeals from the Orders entered by the Court on April 1, 2013 denying Defendant's Motion for Summary Judgment and Sustaining Plaintiffs' Motion for Summary Judgment on Count I of the Complaint and deemed final and appealable by the Court's Order of May 13, 2013. The name of the appellant is the Campbell County Board of Trustees. The names of the appellees against whom the appeal is taken are the Plaintiffs, Charlie Coleman, John P. Roth, and Erik Hermes.

Respectfully submitted,


Jeffrey C. Mando, Esq. (#43548)

Louis D. Kelly, Esq. (#92094)

ADAMS, STEPNER,
WOLTERMANN & DUSING, PLLC

40 West Pike Street
Covington, KY 41012

859.394.6200

859.392.7263 - Fax

jmando@aswdlaw.com

lkelly@aswdlaw.com

*Attorneys for Defendant, Campbell County
Library Board of Trustees*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served via regular U.S. Mail, postage prepaid, on this the 14 day of May, 2013, upon the following:

Brandon N. Voelker, Esq.
4135 Alexandria Pike
Suite 109
Cold Spring, KY 41076

Attorney for Plaintiffs


Jeffrey C. Mando

MAY 13 1995

LAG 95 - OSB
DESIGNATION ASSIGNED
BY KDLA FOR FILING
PURPOSES ONLY



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

CHRIS GORMAN
ATTORNEY GENERAL

P.O. Box 2000
Frankfort, KY 40602-2000

May 8, 1995

Jan J. Banks
Library Director
Casey County Public Library
Route 1, Box A
Middleburg Street
Liberty, Kentucky 42539

Dear Ms. Banks:

This letter responds to your recent inquiry regarding the applicability of House Bill 44 to the property tax rates of library districts. The question arises because of an apparent conflict between two statutes. The first, KRS 173.790, says that library tax rates cannot be raised or lowered without the filing of a petition signed by 51% of the voters in the district. The second, KRS 132.023 (enacted as part of House Bill 44) provides for the automatic lowering of property tax rates to counteract the effect of higher assessments.

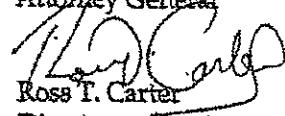
We do not believe that the General Assembly intended library districts to be exempt from the provisions of House Bill 44. The relevant provision in KRS 173.790 has existed since the statute's creation in 1964. House Bill 44 was enacted in 1979. In its original form, KRS 132.023 included the phrase "notwithstanding any statutory provisions to the contrary." These observations compel us to conclude that the legislature was aware of the library tax provision when it enacted House Bill 44 and it did not intend that the older library tax provision override the newly enacted House Bill 44. Indeed, this has been the construction acquiesced in during the sixteen years since House Bill 44 was enacted.

Jan J. Banks
Page 2

Because we cannot discern any reason why library districts should be exempt from House Bill 44, we believe that the Department of Local Government has correctly applied the statutes in calculating a lowered tax rate for your library district.

Sincerely,

Chris Gorman
Attorney General


Ross T. Carter

Director
Division of Civil and Environmental Law
Capitol Building
Frankfort, Kentucky 40601

KTC/rtc